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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 United States of America,
10 Plaintiff

11 v.

12 Cruz Albert LaFarga et al.,
13 Defendants
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Case No. 2:13-cr-00085-JAD-PAL

Order Granting Motion to Continue Trial
[Doc. 66]

15 Before the Court is Defendant Cruz Albert Lafarga's Motion to Continue Trial. Doc. 66.
16 This written motion for an approximately 45-day continuance follows Lafarga's request for
17 continuance raised orally at today's calendar call for the trial scheduled to commence on January 7,
18 2014. The government opposes the motion on the basis that it has announced ready for trial; co-
19 defendant Marco Antonio Caballero-Perez also announced ready for trial but agrees to the
20 continuance. Defendant Lafarga requests the continuance on the representation that he needs
21 additional time to meet and confer with his attorney, particularly because the superseding indictment,
22 filed on November 12, 2013, adds a firearms charge that "has greatly increased Mr. Lafarga's
23 guideline range." Doc. 66 at 2. He also has "additional legal questions regarding any viable
24 defenses that he may present at trial" and about "the potential penalties that he will face if he is not
25 successful at trial," and needs to re-review the discovery with his counsel. *Id.* He contends that the
26 additional time requested is excludable in computing the time within which the trial must commence
27 under the Speedy Trial Act and that denial of this additional time "could result in a miscarriage of
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justice.” *Id.*

Having thoroughly considered the motion and the positions of the parties voiced at the Calendar Call when this request was initially raised, and good cause appearing therefore, the Court finds:

FINDINGS OF FACT

1. Lafarga was indicted on March 12, 2013.
2. The March 12, 2013, Indictment charges him with: Count One: Conspiracy to Distribute Methamphetamine, in violation of Title 21 U.S.C. § 846 and 841(b)(1)(A); Count Two: Distribution of Methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B); Counts Three through Five: Distribution of Methamphetamine, in violation of Title 21 U.S.C. § 841(a)(1) and (b)(1)(A); and Count Six: Possession with the Intent to Distribute Methamphetamine, in violation of Title 21 U.S.C. § 841(a)(1) and (b)(1)(A).
3. On November 12, 2013, the government filed a superseding indictment, re-alleging the six original counts from the March 12, 2013 indictment and adding count seven, which alleges that on or about February 26, 2013, Mr. Lafarga, being an alien, illegally or unlawfully in the United States did knowingly possess a firearm in violation of Title 18 U.S.C. § 922(g)(5)(A) and 924(a)(2).
4. Mr. Lafarga is moving this court to continue his trial for 45 days so that defense counsel may meet with him and answer additional questions that he has regarding his case. The superseding indictment has greatly increased Mr. Lafarga’s guideline range. Mr. Lafarga has legitimate additional legal questions and requests more time so that he can confer with counsel to have these questions answered and to evaluate any viable defenses that he may present at trial, the potential penalties that he will face if he is not successful at trial, and the discovery against him, and there is no evidence that counsel has not proceeded with due diligence.
5. Lafarga’s motion for severance of counts and defendants, Doc. 52, filed on November 26, 2013, was denied by this Court on December 30, 2013. Doc. 62.

6. Denial of this request for continuance could result in a miscarriage of justice and deny Lafarga and his counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

7. The additional time requested by this Motion is excludable in computing the time within which the trial herein must commence pursuant to the Speedy Trial Act, Title 18, United States Code, Section 3161(h)(1)(D) and Title 18, United States Code, Section 3161(h)(7)(A), considering the factors under Title 18, United States Code, Sections 3161(h)(7)(B)(i) and 3161(h)(7)(B)(iv).

8. Co-defendant Caballero-Perez agrees to the continuance; the government's only basis for opposition is that it is ready for trial.

CONCLUSIONS OF LAW

Based upon the above findings of fact, the Court concludes that:

Denial of this request for continuance would deprive Lafarga and his counsel of the opportunity to effectively and thoroughly prepare for trial and could result in a miscarriage of justice.

The ends of justice served by the granting of this continuance outweigh the best interests of the public and the defendants in a speedy trial.

ORDER

IT IS HEREBY ORDERED that the Trial currently scheduled for January 7, 2014, at 9:00 a.m. be continued to March 4, 2014 at 9:00 a.m. in courtroom 6D.

IT IS FURTHER ORDERED that the parties shall appear for Calendar Call on Monday, March 3, 2014, at 9:00 a.m. in courtroom 6D.

DATED December 31, 2013.



Jennifer A. Dorsey
United States District Court Judge